

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

MAR 1 2007

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

In re DELL Derivative Litigation

Case No. A-06-CA-839-SS

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**ORDER**

BE IT REMEMBERED on the 1<sup>st</sup> day of March 2007 the Court reviewed the file in the above-styled cause, specifically Plaintiffs Diane Crosser and Ian Beiser's Joint Amended Motion for Consolidation, Appointment of Co-Lead Plaintiffs, and Approval of Selection of Co-Lead Counsel. The motion is unopposed insofar as it concerns the appointment of co-lead plaintiffs and co-lead counsel and the filing of a consolidated complaint, and moot to the extent it concerns consolidation. See Consolidation Order of February 28, 2007.

When the Court consolidates related cases under Federal Rule of Civil Procedure 42(a), it is also within the Court's discretion to appoint a lead plaintiff and appoint one or more attorneys as lead counsel and liason counsel. See 9 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2385 (2d ed., 1995); see also MANUAL FOR COMPLEX LITIGATION §10.221 (2004); *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1014 (5th Cir. 1977). In making such an appointment, the Court should consider both lead plaintiff's and lead counsel's ability to adequately represent the interests of all plaintiffs. See Fed. R. Civ. P. 23.1 (in a derivative action, the plaintiff must "fairly and adequately represent the interests of the shareholders"); *Dupont v. Southern Pacific Co.*, 366 F.2d 193, 196 (5th Cir.1966) (holding consolidation and appointment of lead counsel

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inappropriate where the interests of plaintiffs were in conflict). Even when all parties agree on the appointment of lead plaintiff and lead counsel, the Court must make its own inquiry into the adequacy of such representation. *See* MANUAL FOR COMPLEX LITIGATION §10.224.

In this consolidated derivative action, Plaintiffs Ian Beiser and Diane Crosser move for appointment as co-lead Plaintiffs. Both Beiser and Crosser “have been and continue to be shareholders of Dell.” Mot. Consol. 10. Both Plaintiffs, particularly Crosser, have conducted substantial research prior to filing detailed complaints. Their claims are nearly identical and there does not appear to be any conflict or potential conflict of interest raised by their representation of this group of plaintiffs. (In fact, at the moment, Beiser and Crosser *are* the only plaintiffs in the derivative Consolidated Action).

Plaintiffs seek appointment of their respective chosen counsel, Johnson Bottini LLP and the Weiser Law Firm, P.C. as co-lead counsel, with the local firm of Graves Hathaway, PLLC acting as liason counsel. It appears to the Court that this arrangement will facilitate the resolution of the case. Johnson Bottini and the Weiser Law Firm are both small firms with experience in this type of derivative litigation. Appointing them co-lead counsel will allow these firms to combine their resources and experience to the plaintiffs’ benefit. Appointing Graves Hathaway, a Texas-based firm, as liason counsel will help these experienced firms, which are based outside Texas, successfully navigate the local rules. The Court notes, however, that individual attorneys, not law firms, practice before this Court. Therefore, the Court will appoint the individual attorneys from each firm who have entered an appearance in the case to the requested roles.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Consolidation, Appointment of Co-Lead Plaintiffs, and Approval of Selection of Co-Lead Counsel is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs Ian Beiser and Diane Crosser are appointed Co-Lead Plaintiffs in the Consolidated Action, *In re Dell Derivative Litigation*, A-06-cv-839-SS.

IT IS FURTHER ORDERED that Brett W. Weaver and Frank Johnson of Johnson Bottini LLP and Brett Stecker, Robert B. Weiser, and Sandra G. Smith of the Weiser Law Firm, P.C. are appointed Co-Lead Counsel for Plaintiffs for the conduct of the Consolidated Action, *In re Dell Derivative Litigation*, A-06-cv-839-SS.

IT IS FURTHER ORDERED that Richard L. Hathaway<sup>1</sup> of Graves Hathaway, PLLC is appointed as Liason Counsel for Plaintiffs in the Consolidated Action, *In re Dell Derivative Litigation*, A-06-cv-839-SS.

IT IS FINALLY ORDERED that Plaintiffs shall file their Consolidated Complaint within sixty (60) days of the entry of this Order.

SIGNED this the 1<sup>st</sup> day of March 2007.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Though both Richard Hathaway and Curtis C. Graves of Graves Hathaway, PLLC have entered appearances for Plaintiffs, the proposed order submitted by Plaintiffs requested the appointment of Richard Hathaway as Liason Counsel and did not mention Mr. Graves.